

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY M DREW
Claimant

KIMMES ENTERPRISES LLC
Employer

APPEAL 17A-UI-02247-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/29/17
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Kimmes Enterprises, LLC (employer) filed an appeal from the February 21, 2017, reference 01, unemployment insurance decision that found its protest untimely and allowed Amy M. Drew (claimant) to receive unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 22, 2017. The claimant chose to submit a written statement rather than participate in the hearing. The employer participated by Administrator Sarah Emery. Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on February 6, 2017 and stated any protest was due on February 16, 2017. Administrator Sarah Emery completed the document on February 16, 2017 and attempted to fax it to Iowa Workforce Development (IWD). The following morning, she was unable to obtain confirmation that the fax had successfully transmitted. She then resubmitted the protest on February 17, 2017. The claimant's December 10, 2016, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer submitted a timely protest to the claimant's claim for unemployment insurance benefits.

Iowa Code § 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer filed a protest in a timely manner on February 16, 2017, but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely.

DECISION:

The February 21, 2017, reference 01, unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of IWD for a fact-finding interview and unemployment insurance decision.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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